

AMENDED IN SENATE JUNE 14, 2012

AMENDED IN ASSEMBLY APRIL 17, 2012

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CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 2066

Introduced by Assembly Member Monning

February 23, 2012

An act to amend Sections 1569.525 and 1569.682 of the Health and Safety Code, relating to residential care facilities for the elderly.

LEGISLATIVE COUNSEL'S DIGEST

AB 2066, as amended, Monning. Residential care facilities for the elderly: revocation of licenses.

Existing law provides for the licensure and regulation of residential care facilities for the elderly. These provisions are administered by the State Department of Social Services. Violation of these provisions is a misdemeanor.

Existing law requires a licensee of a licensed residential care facility for the elderly to take all reasonable steps to transfer affected residents safely as a result of the forfeiture of a license, the change of use of the facility pursuant to the department's regulations, or the revocation of a license. This requirement includes providing each resident or the resident's responsible person with a written notice no later than 60 days before the intended eviction and, if 7 or more residents will be transferred as a result of the forfeiture of a license, revocation of a license, or change in the use of the facility, submitting a proposed closure plan to the department for approval.

This bill would eliminate the requirement that a licensee comply with these provisions on the basis of the revocation of a license.

Existing law requires, if the Director of Social Services determines that it is necessary to temporarily suspend a license of a residential care facility for the elderly in order to protect the residents or clients of the facility from physical or mental abuse, abandonment, or any other substantial threat to health or safety, the department to make every effort to minimize trauma for the residents. Existing law authorizes and requires the department, in the event of a temporary license suspension, to comply with specified procedures relating to the transfer of residents.

This bill would make these provisions applicable in the event that the director determines that it is necessary to revoke the license of a residential care facility for the elderly. The bill also would require that, upon an order to revoke a license, *except as specified*, the licensee provide a 60-day written notice of license revocation that may lead to closure to the resident and the resident's responsible person within 24 hours of receipt of the department's order of revocation. The bill would authorize the department to allow the licensee to secure the services of a person who is not an immediate family member of the licensee or an entity that is not owned by the licensee to manage the day-to-day operations of the facility for at least 60 days, provided that the person or entity is licensed and in substantial compliance to operate a residential care facility for the elderly that is of comparable or greater size and comparable programming to the facility, and that the person or entity meets other specified requirements. The bill would require that a resident who transfers from the facility receive a refund of paid preadmission fees in accordance with specified provisions. The bill would require the licensee, within 10 days of all residents having left the facility, to submit a final list of names and new locations of all residents to the department and the local ombudsman program.

By expanding the definition of a crime, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 1569.525 of the Health and Safety Code
2 is amended to read:

3 1569.525. (a) If the director determines that it is necessary to
4 temporarily suspend or to revoke any license of a residential care
5 facility for the elderly in order to protect the residents or clients
6 of the facility from physical or mental abuse, abandonment, or any
7 other substantial threat to health or safety pursuant to Section
8 1569.50, the department shall make every effort to minimize
9 trauma for the residents.

10 (b) The department shall contact any local agency that may have
11 placement or advocacy responsibility for the residents of a
12 residential care facility for the elderly after a decision is made to
13 temporarily suspend or to revoke the license of the facility and
14 prior to its implementation. The department shall work with these
15 agencies to locate alternative placement sites and to contact
16 relatives responsible for the care of these residents.

17 (c) The department shall use physicians and surgeons and other
18 medical personnel deemed appropriate by the department to provide
19 onsite evaluation of the residents and assist in any transfers.

20 (d) The department may require the licensee to prepare and
21 submit to the licensing agency a written plan for relocation and
22 compliance with the terms and conditions of the approved plans,
23 and to provide other information as necessary for the enforcement
24 of this section.

25 (e) Upon an order to revoke a license, *except an order to revoke*
26 *a license following the temporary suspension of a license pursuant*
27 *to Section 1569.50*, the following shall apply:

28 (1) The licensee shall provide a 60-day written notice of license
29 revocation that may lead to closure to the resident and the resident's
30 responsible person within 24 hours of receipt of the department's
31 order of revocation.

32 (2) The department shall permit the licensee to secure the
33 services of a person who is not an immediate family member of
34 the licensee or an entity that is not owned by the licensee to manage
35 the day-to-day operations of the residential care facility for the
36 elderly for a period of at least 60 days, provided that all of the
37 following conditions are met:

1 (A) A proposal is submitted to the department within 72 hours
2 of the licensee's receipt of the department's order of revocation
3 that includes both of the following:

4 (i) A completed "Application for a Community Care Facility
5 or Residential Care Facility for the Elderly License" form (LIC
6 200), or similar form as determined by the department, signed and
7 dated by both the licensee and the person or entity described in
8 paragraph (2).

9 (ii) A copy of the executed agreement between the licensee and
10 the person or entity described in paragraph (2) that delineates the
11 roles and responsibilities of each party and specifies that the person
12 or entity described in paragraph (2) shall have the full authority
13 necessary to operate the facility, in compliance with all applicable
14 laws and regulations, and without interference from the licensee.

15 (B) The person or entity described in paragraph (2) shall be
16 currently licensed and in substantial compliance to operate a
17 residential care facility for the elderly that is of comparable size
18 or greater and has comparable programming to the facility. For
19 purposes of this subparagraph, the following definitions apply:

20 (i) "Comparable programming" includes, but is not limited to,
21 dementia care, hospice care, and care for residents with exempted
22 prohibited health care conditions.

23 (ii) "Comparable size" means a facility capacity of 1 to 15
24 residents, 16 to 49 residents, or 50 or more residents.

25 (C) The person or entity described in paragraph (2) shall not be
26 subject to the application fee specified in Section 1569.185.

27 (D) If the department denies a proposal to secure the services
28 of a person or entity pursuant to paragraph (2), this denial shall
29 not be deemed a denial of a license application subject to the right
30 to a hearing under Section 1569.22 and other procedural rights
31 under Section 1569.51.

32 (3) (A) Notwithstanding Section 1569.651 or any other
33 provision of law, for paid preadmission fees in excess of five
34 hundred dollars (\$500), a resident who transfers from the facility
35 during the 60-day period described in paragraph (1) of subdivision
36 (e) is entitled to a refund in accordance with all of the following:

37 (i) A 100-percent refund if preadmission fees were paid within
38 six months of the notice of closure required by paragraph (1).

1 (ii) A 75-percent refund if preadmission fees were paid more
2 than six months, but not more than 12 months, before the notice
3 of closure required by paragraph (1).

4 (iii) A 50-percent refund if preadmission fees were paid more
5 than 12 months, but not more than 18 months, before the notice
6 of closure required by paragraph (1).

7 (iv) A 25-percent refund if preadmission fees were paid more
8 than 18 months, but not more than 25 months, before the notice
9 of closure required by paragraph (1).

10 (B) No preadmission fee refund is required if preadmission fees
11 were paid 25 months or more before the notice of closure required
12 by paragraph (1).

13 (C) The preadmission fee refund required by this paragraph
14 shall be paid within 15 days of issuing the notice of closure
15 required by paragraph (1). In lieu of the refund, the resident may
16 request that the licensee provide a credit toward the resident's
17 monthly fee obligation in an amount equal to the preadmission fee
18 refund due.

19 (4) If a resident transfers from the facility during the 60-day
20 period described in paragraph (1) of subdivision (e), and the
21 resident gives notice at least five days before leaving the facility,
22 the licensee shall refund to the resident or his or her legal
23 representative a proportional per diem amount of any prepaid
24 monthly fees at the time the resident leaves the facility and the
25 unit is vacated. Otherwise the licensee shall pay the refund within
26 seven days from the date that the resident leaves the facility and
27 the unit is vacated.

28 (5) Within 10 days after all residents who are transferring
29 pursuant to these provisions have left the facility, the licensee that
30 had his or her license revoked shall, based on information provided
31 by the resident or the resident's legal representative, submit a final
32 list of names and new locations of all residents to the department
33 and the local ombudsman program.

34 (f) Nothing in this section shall preclude the department from
35 amending the effective date in the order of revocation and *closing*
36 *the facility prior to the end of the 60-day notice period provided*
37 *for in subdivision (e), or from pursuing any other available*
38 *remedies if necessary to protect the health and safety of the*
39 *residents in care.*

SEC. 2. Section 1569.682 of the Health and Safety Code is amended to read:

1569.682. (a) A licensee of a licensed residential care facility for the elderly shall, prior to transferring a resident of the facility to another facility or to an independent living arrangement as a result of the forfeiture of a license, as described in subdivision (a), (b), or (f) of Section 1569.19, or a change of use of the facility pursuant to the department's regulations, take all reasonable steps to transfer affected residents safely and to minimize possible transfer trauma, and shall, at a minimum, do all of the following:

(1) Prepare, for each resident, a relocation evaluation of the needs of that resident, which shall include both of the following:

(A) Recommendations on the type of facility that would meet the needs of the resident based on the current service plan.

(B) A list of facilities, within a 60-mile radius of the resident's current facility, that meet the resident's present needs.

(2) Provide each resident or the resident's responsible person with a written notice no later than 60 days before the intended eviction. The notice shall include all of the following:

(A) The reason for the eviction, with specific facts to permit a determination of the date, place, witnesses, and circumstances concerning the reasons.

(B) A copy of the resident's current service plan.

(C) The relocation evaluation.

(D) A list of referral agencies.

(E) The right of the resident or resident's legal representative to contact the department to investigate the reasons given for the eviction pursuant to Section 1569.35.

(F) The contact information for the local long-term care ombudsman, including address and telephone number.

(3) Discuss the relocation evaluation with the resident and his or her legal representative within 30 days of issuing the notice of eviction.

(4) Submit a written report of any eviction to the licensing agency within five days.

(5) Upon issuing the written notice of eviction, a licensee shall not accept new residents or enter into new admission agreements.

(6) (A) For paid preadmission fees in excess of five hundred dollars (\$500), the resident is entitled to a refund in accordance with all of the following:

1 (i) A 100-percent refund if preadmission fees were paid within
2 six months of notice of eviction.

3 (ii) A 75-percent refund if preadmission fees were paid more
4 than 6 months but not more than 12 months before notice of
5 eviction.

6 (iii) A 50-percent refund if preadmission fees were paid more
7 than 12 months but not more than 18 months before notice of
8 eviction.

9 (iv) A 25-percent refund if preadmission fees were paid more
10 than 18 months but less than 25 months before notice of eviction.

11 (B) No preadmission refund is required if preadmission fees
12 were paid 25 months or more before the notice of eviction.

13 (C) The preadmission refund required by this paragraph shall
14 be paid within 15 days of issuing the eviction notice. In lieu of the
15 refund, the resident may request that the licensee provide a credit
16 toward the resident's monthly fee obligation in an amount equal
17 to the preadmission fee refund due.

18 (7) If the resident gives notice five days before leaving the
19 facility, the licensee shall refund to the resident or his or her legal
20 representative a proportional per diem amount of any prepaid
21 monthly fees at the time the resident leaves the facility and the
22 unit is vacated. Otherwise the licensee shall pay the refund within
23 seven days from the date that the resident leaves the facility and
24 the unit is vacated.

25 (8) Within 10 days of all residents having left the facility, the
26 licensee, based on information provided by the resident or
27 resident's legal representative, shall submit a final list of names
28 and new locations of all residents to the department and the local
29 ombudsman program.

30 (b) If seven or more residents of a residential care facility for
31 the elderly will be transferred as a result of the forfeiture of a
32 license or change in the use of the facility pursuant to subdivision
33 (a), the licensee shall submit a proposed closure plan to the
34 department for approval. The department shall approve or
35 disapprove the closure plan, and monitor its implementation, in
36 accordance with the following requirements:

37 (1) Upon submission of the closure plan, the licensee shall be
38 prohibited from accepting new residents and entering into new
39 admission agreements for new residents.

1 (2) The closure plan shall meet the requirements described in
2 subdivision (a), and describe the staff available to assist in the
3 transfers. The department's review shall include a determination
4 as to whether the licensee's closure plan contains a relocation
5 evaluation for each resident.

6 (3) Within 15 working days of receipt, the department shall
7 approve or disapprove the closure plan prepared pursuant to this
8 subdivision, and, if the department approves the plan, it shall
9 become effective upon the date the department grants its written
10 approval of the plan.

11 (4) If the department disapproves a closure plan, the licensee
12 may resubmit an amended plan, which the department shall
13 promptly either approve or disapprove, within 10 working days
14 of receipt by the department of the amended plan. If the department
15 fails to approve a closure plan, it shall inform the licensee, in
16 writing, of the reasons for the disapproval of the plan.

17 (5) If the department fails to take action within 20 working days
18 of receipt of either the original or the amended closure plan, the
19 plan, or amended plan, as the case may be, shall be deemed
20 approved.

21 (6) Until such time that the department has approved a licensee's
22 closure plan, the facility shall not issue a notice of transfer or
23 require any resident to transfer.

24 (7) Upon approval by the department, the licensee shall send a
25 copy of the closure plan to the local ombudsman program.

26 (c) (1) If a licensee fails to comply with the requirements of
27 subdivision (a), and if the director determines that it is necessary
28 to protect the residents of a facility from physical or mental abuse,
29 abandonment, or any other substantial threat to health or safety,
30 the department shall take any necessary action to minimize trauma
31 for the residents. The department shall contact any local agency
32 that may have placement or advocacy responsibility for the
33 residents, and shall work with those agencies to locate alternative
34 placement sites, contact relatives or other persons responsible for
35 the care of these residents, provide onsite evaluation of the
36 residents, and assist in the transfer of residents.

37 (2) The participation of the department and local agencies in
38 the relocation of residents from a residential care facility for the
39 elderly shall not relieve the licensee of any responsibility under
40 this section. A licensee that fails to comply with the requirements

1 of this section shall be required to reimburse the department and
2 local agencies for the cost of providing the relocation services. If
3 the licensee fails to provide the relocation services required in
4 subdivisions (a) and (b), then the department may request that the
5 Attorney General's office, the city attorney's office, or the local
6 district attorney's office seek injunctive relief and damages in the
7 same manner as provided for in Chapter 5 (commencing with
8 Section 17200) of Part 2 of Division 7 of the Business and
9 Professions Code.

10 (d) A licensee who fails to comply with requirements of this
11 section shall be liable for the imposition of civil penalties in the
12 amount of one hundred dollars (\$100) per violation per day for
13 each day that the licensee is in violation of this section, until such
14 time that the violation has been corrected. The civil penalties shall
15 be issued immediately following the written notice of violation.
16 However, if the violation does not present an immediate or
17 substantial threat to the health or safety of residents and the licensee
18 corrects the violation within three days after receiving the notice
19 of violation, the licensee shall not be liable for payment of any
20 civil penalties pursuant to this subdivision related to the corrected
21 violation.

22 (e) A resident of a residential care facility for the elderly covered
23 under this section, may bring a civil action against any person,
24 firm, partnership, or corporation who owns, operates, establishes,
25 manages, conducts, or maintains a residential care facility for the
26 elderly who violates the rights of a resident, as set forth in this
27 section. Any person, firm, partnership, or corporation who owns,
28 operates, establishes, manages, conducts, or maintains a residential
29 care facility for the elderly who violates this section shall be
30 responsible for the acts of the facility's employees and shall be
31 liable for costs and attorney's fees. Any such residential care
32 facility for the elderly may also be enjoined from permitting the
33 violation to continue. The remedies specified in this section shall
34 be in addition to any other remedy provided by law.

35 (f) This section shall not apply to a licensee that has obtained
36 a certificate of authority to offer continuing care contracts, as
37 defined in paragraph (8) of subdivision (c) of Section 1771.

38 SEC. 3. No reimbursement is required by this act pursuant to
39 Section 6 of Article XIII B of the California Constitution because
40 the only costs that may be incurred by a local agency or school

1 district will be incurred because this act creates a new crime or
2 infraction, eliminates a crime or infraction, or changes the penalty
3 for a crime or infraction, within the meaning of Section 17556 of
4 the Government Code, or changes the definition of a crime within
5 the meaning of Section 6 of Article XIII B of the California
6 Constitution.

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